

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Develop a
Successor to Existing Net Energy Metering
Tariffs Pursuant to Public Utilities Code
Section 2827.1, and to Address Other Issues
Related to Net Energy Metering.

Rulemaking 14-07-002
(Filed July 10, 2014)

**APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) FOR
REHEARING OF DECISION 18-06-027**

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Pursuant to Cal. Pub. Util. Code §§ 1731(b)(1), 1732¹ and Commission Rule 16.1, San Diego Gas & Electric Company (“SDG&E”) hereby applies for rehearing of Decision (“D.”) 18-06-027² in the above-captioned matter. Specifically, SDG&E seeks rehearing on two issues improperly ignored by the Decision: (1) that the 20 percent rate discount provided to CARE³ customers violates statutory discount limits, and (2) program implementation conflicts with the installation of SDG&E’s replacement Customer Information System.

I. BACKGROUND AND SUMMARY

The Decision (at 2) states that it arises from Assembly Bill (“AB”) 327,⁴ which directed the Commission to develop a standard contract or tariff applicable to customer-generators with renewable electrical generation, as a successor to then-existing Net Energy Metering tariffs, and,

¹ Section 1732 provides that “... [t]he application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful.” References to sections are to the Cal. Public Utilities Code.

² *Alternate [sic] Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities* (June 22, 2018) (the “Decision”).

³ California Alternate Rates for Energy.

⁴ (Perea), Stats. 2013, ch. 611, *codified at* Cal. Pub. Util. Code § 2827.1(b)(1).

as a part of this mandate, required the Commission to develop “specific alternatives designed for growth among residential customers in disadvantaged communities” (“DACs”).⁵

On December 14, 2017, D.17-12-022 adopted the Solar on Multifamily Affordable Housing (“SOMAH”) program pursuant to the direction of AB 693,⁶ and found that SOMAH installations also should be counted towards the Commission’s obligation to encourage installation of renewables in DACs under AB 327.⁷ Based solely on a record consisting of party proposals followed by a round of comments submitted before D.17-12-022 issued,⁸ the Decision (at 7) adopts “additional mechanisms for encouraging growth of renewable distributed generation in DACs” pursuant to AB 327. These additional mechanisms first appeared in concrete form in the proposed and alternate decisions issued upon which the Decision was based.⁹

Specifically, the Decision adopts three programs aimed at DACs. First, the DAC – Single-family Solar Homes (“DAC-SASH”) program, modeled after the Single-family Affordable Solar Homes (“SASH”) program, will provide up-front financial incentives towards

⁵ Cal. Pub. Util. Code § 2827.1(b)(1).

⁶ *Decision Adopting Implementation Framework for Assembly Bill 693 and Creating the Solar on Multifamily Affordable Housing Program.*

⁷ D.17-12-022 at 14.

⁸ The Administrative Law Judge ruling issued March 14, 2017, sought updated proposals and/or comments on alternatives for DACs. That ruling (at 4) stated that proposals and comments should assume that the Commission will count the program it adopts to implement AB 693 “toward the satisfaction of the commission’s obligation to ensure . . . specific alternatives designed for growth among residential customers in disadvantaged communities. . .” (Section 2870(b)(1).), and sought proposals for alternatives for DACs that are distinct from any program implementing AB 693. Comments were filed on May 26, 2017 and reply comments on June 16, 2017.

⁹ *The Proposed Decision of ALJs Hecht, Kao, and M’Kenzie and Alternate Proposed Decision of Commission Martha Guzman Aceves* issued February 20, 2018. A revised alternate proposed *Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities* issued May 22, 2018. The Decision was presumably based on the round of comments that followed each of the proposed and alternate decisions under Commission Rule 14.3.

the installation of solar generating systems on the homes of low-income homeowners. The DAC-SASH program will be available to low-income customers who are resident-owners of single-family homes in DACs. The DAC-SASH program incentives will assist low-income customers in overcoming barriers to the installation of solar energy, such as a lack of up-front capital or credit needed to finance solar installation.

The Decision's second program, the DAC-Green Tariff, is modeled after the Green Tariff portion of the Green Tariff/Shared Renewables ("GTSR") programs adopted in D.15-01-051. The DAC-Green Tariff program will be available to customers who live in DACs and meet the income eligibility requirements for the California Alternate Rates for Energy ("CARE") and Family Electric Rate Assistance ("FERA") programs. The DAC-Green Tariff will provide a 20 percent rate discount compared to their otherwise applicable tariff.¹⁰

The third program adopted, The Community Solar Green Tariff program, is a variation on the enhanced community renewables portion of the GTSR program. This Community Solar program aims to allow primarily low-income customers¹¹ in disadvantaged communities to benefit from the development of solar generation projects located in their own or nearby disadvantaged communities. The Decision (at 71-72) finds that 50 percent of subscribing customers in an eligible DAC must be CARE/FERA eligible. This program will also provide eligible customers a 20 percent rate discount compared to their otherwise applicable tariff.¹²

¹⁰ Decision at 52-53, conclusion of law 13 at 97.

¹¹ The Decision (at 99, conclusion of law 24) defines "low-income customers" as "CARE or FERA-eligible customers."

¹² *Id.* at 74, conclusion of law 13 at 97. The Decision (at 74) provides that "Utilities should use the same methodology to calculate the 20% discount as they use to calculate the CARE/FERA discount."

SDG&E seeks rehearing of two issues. First, for the DAC-Green Tariff and Community Solar programs, the Decision unlawfully adopts an additional discount for CARE customers, which violates the AB 327 limit on discounts to such customers.¹³ It compounds the unlawfulness by failing even to acknowledge the issue, or to acknowledge SDG&E's comments pointing out the violation.¹⁴ Second, the Decision fails to address that the implementation schedules for its new programs conflict with SDG&E's implementation of its Customer Information System replacement project – the subject of application (“A.”) 17-04-027. Below, SDG&E details the bases for seeking rehearing of these two items.

II. THE 20 PERCENT DISCOUNT TO CARE/FERA CUSTOMERS VIOLATES AB 327 AND REASONED DECISIONMAKING

A. The 20 percent discount violates AB 327

The Decision's DAC-Green Tariff is available only to CARE- and FERA-eligible customers in the DACs defined by the program. Similarly, 50 percent of the customers subscribing to its Community Solar program must be CARE- and FERA- eligible. The Decision makes available to CARE/FERA customers in both programs a 20 percent discount applied to a

¹³ Cal. Pub. Util. Code § 739.1(c)(1), added by AB 327, states that “[t]he average effective CARE discount shall not be less than 30 percent or more than 35 percent of the revenues that would have been produced for the same billed usage by non-CARE customers.” While SDG&E is not claiming that extending the discount to FERA customers violates AB 327, note that the statute explicitly provides that electrical corporations shall, “in addition to the CARE program, including a ... [FERA]program, utilize a single application form, to enable an applicant to alternatively apply for any assistance program for which the applicant may be eligible.” *Id.*, § 739.1(f)(2).

¹⁴ *See, Comments of ... [SDG&E] on Proposed Decision of ALJs Hecht, Kao and McKenzie* (March 12, 2018) (“SDG&E Comments on PD”) at 6-7; *Comments of ... [SDG&E] on Alternate Proposed Decision of Commission Martha Guzman Aceves* (March 12, 2018) (“SDG&E Comments on APD”) at 1-2; *Comments of ... [SDG&E] on Revised Alternate Proposed Decision of Commission Martha Guzman Aceves* (June 11, 2018) (“SDG&E Comments on Revised APD”) at 2-3.

customer's total bill, in addition to the existing CARE/FERA discount.¹⁵ The Commission lacks the authority to impose this additional discount for CARE customers.

Section 739.1(c)(1)¹⁶ states that “[t]he average CARE discount shall not be less than 30 percent or more than 35 percent of the revenues that would have been produced for the same billed usage by non-CARE customers.” Per D.15-07-001, “any utility that currently has an average effective discount greater than 35% is instructed to reduce its discount level to between 30 and 35% on ‘a reasonable phase in schedule.’”¹⁷ SDG&E’s gradual reduction of the CARE discount, outlined in D.15-07-001, towards the statutory requirement is ongoing. Adding additional discounts to the amount CARE customers already receive contradicts these efforts towards a compliant discount, and will put SDG&E further out of compliance with the statute.

The Decision’s sole basis for finding the 20 percent discount reasonable states (at 52-53):

Because this program will benefit low-income customers, we find that it is reasonable to provide DAC-Green Tariff participants with an additional discount over otherwise applicable rates, to encourage participation and make renewable energy more accessible and affordable for low-income residents of DACs.¹⁸

This conclusory assertion cannot overcome the Decision’s failure to address its obvious impact on the AB 327 limitation on the CARE discount.

The legislature has specifically limited the substantial discounts CARE customers already receive compared to non-CARE customers, and the Commission has acted to enforce these limits on a discount borne by other customers.¹⁹ Requiring utilities to provide the Decision’s additional

¹⁵ Decision at 74, conclusion of law 13 at 97.

¹⁶ Added by AB 327.

¹⁷ D.15-07-001 at 231.

¹⁸ See also, *id.* finding of fact 17 at 93.

¹⁹ As noted at n. 13 above, SDG&E is not claiming that providing the discount to FERA customers violates the statute.

discount results in discount levels that exceed the Commission's authority to impose a CARE discount, and the Commission cannot avoid this limit by giving the additional discount to these customers under the guise of another program.²⁰ Accordingly, rehearing should be granted and the Commission should remove the 20 percent discount.

B. The Decision errs by failing to address the cost-shift implications of its 20 percent discount

The Decision fails to address that the 20 percent discount is paid for by non-participating customers, and this cost shift must be acknowledged and addressed. Section 2827(h)(5)(B) provides that the Commission "shall ensure that the rate does not result in a shifting of costs between eligible customer-generators and other bundled service customers."²¹ Both the DAC-Green Tariff and the Community Solar programs aim to give customers the benefits of solar generation; Community Solar in fact would make a participating customer a participant in a solar generating unit.

The Decision (at 52) does state that, "... [i]n determining the appropriate rate discount, we must balance the goal of increasing low-income customers' access to renewable generation at reasonable rates with the potential costs to non-participating ratepayers." But the Decision does not further address the cost shift issue. While the nature of this adjudication, with a record

²⁰ For the Commission to confer this additional discount effectively renders the AB 327 discount limit meaningless. The Commission's action thereby violates a canon of statutory interpretation, which holds that a statutory provision may not be interpreted in a way that renders it a nullity. *See Ingredient Communications Council, Inc. v. Lungren*, 2 Cal. App. 4th 1480, 1492, 4 Cal. Rptr. 2d 216, 224 (3d Dist. 1992), *rev. denied* (April 23, 1992).

²¹ Added by AB 327. D.16-01-044, *Decision Adopting Successor to Net Energy Metering Tariff* (at 81, n. 93) explains that "[t]his circumstance is often referred to as a 'cost shift' from NEM customers to other customers, who pay the increase in rates but without receiving any of the specific benefits, such as credit for exports, that accrue to NEM customers." Granting the 20 percent discount to a favored customer subset in this case has the same effect as NEM, because those who pay for the discount do not receive any benefits, and the discount's purpose is to encourage access to renewable energy.

consisting of parties’ comments - *i.e.*, unsupported assertions – did not permit the introduction of facts tested by the opportunity for cross-examination, if permitted, SDG&E would submit evidence showing that the 20 percent discount would cause a substantial cost shift for SDG&E’s non-participating customers. For illustrative purposes, we submit the following estimate, based on our current understanding of the Decision, that suggests that the possible resultant cost shift could be substantial, if all potential subscribers enroll:

Assuming a potential for 11,866 low-income residential customers to enroll in the programs,²² the annual cost shift subsidy from non-participating customers to DAC-Green Tariff and Community Solar customers:²³

Estimated Annual Electric Subsidy Cost

Low-Income Residential Customers Cost	\$1,085,787
Community Sponsor Cost	\$183,946
Total Cost	\$1,269,733

C. The Decision’s failure to acknowledge or address the AB 327 violation timely raised by SDG&E constitutes legal error

Independent of the patent violation of AB 327, the Decision’s application of the 20 percent discount violates the requirements under the Public Utilities Code that the Commission

²² The average residential electric customer in SDG&E’s territory uses 5,138kWh annually. Using a capacity factor of 32% (the weighted capacity factor of SDG&E’s existing contracts with PV for GTSR), the average residential customer would subscribe to 1.83kW of solar generation to cover 100% of their electric usage. Given that the Decision calls for SDG&E’s DAC-Green Tariff and Community Solar to have a combined 21.75MW of generation capacity that is open to residential customers, there is the potential for 11,866 low-income residential customers to enroll in the programs (21.75 MW available / .00183MWper customer = 11,866).

²³ This estimate necessarily assumes implementation details that are yet to be established via the Decision’s advice letter process (at 102, ordering paragraph 8). One conservative assumption is that the estimate considers cost shift only for CARE customers under the Community Solar program (SDG&E has no way to reliably estimate “CARE-eligible customers”). The cost shift would in fact be larger, because, under this program, it appears that the discount is available to all residential customers in a qualifying DAC. *See* Decision at 71-72.

must address issues before it with reasoned decision making.²⁴ In particular, section 1701.2(e) provides:

The commission's decision shall be supported by findings of fact on all issues material to the decision, and the findings of fact shall be based on the record developed by the assigned commissioner or the administrative law judge.

In a decision where the record is based solely on party comments, to ignore a substantive issue raised by a party violates section 1701.2(e). This is reinforced by section 1701.1(e)(8), which provides that "... [t]he commission shall render its decisions based on the law and on the evidence in the record."²⁵ Given that SDG&E raised the issue in comments,²⁶ and that SDG&E's substantial comments were ignored,²⁷ the Decision cannot be said to be based on the record. This is particularly true, where, as here, a party makes out a *prima facie* case that a decision orders relief that exceeds the Commission's statutory authority. The Decision's failure to make any reference to SDG&E's contention also falls squarely with the scope of appellate review of Commission decisions. Section 1757.1, states, in pertinent part:

(a) In any proceeding other than a proceeding subject to the standard of review under Section 1757, review by the court shall not extend further than to

²⁴ Assuming that the 20 percent discount is otherwise within the scope of the Commission's authority (which it is not, as shown in the prior section), administrative law requires "reasoned decisionmaking." *Allentown Mack Sales & Service, Inc. v. National Labor Relations Board*, 522 U.S. 359, 374 (1998); *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 52 (1983). Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational. Courts enforce this principle with regularity when they set aside agency regulations which, though well within the agencies' scope of authority, are not supported by the reasons that the agencies adduce. *See SEC v. Chenery Corp.*, 318 U. S. 80 (1943); *id.*, 332 U. S. 194 (1947).

²⁵ *See City of Stockton v. Marina Towers LLC*, 171 Cal. App. 4th 93, 114 (Cal. App. 3d Dist. 2009), where the court held that a gross abuse of discretion occurs when the public agency acts arbitrarily or capriciously by rendering findings that are lacking in evidentiary support.

²⁶ *See*, n. 14, *supra*. SDG&E also pointed out that the Community Solar program would exacerbate existing cross subsidies. SDG&E Comments on APD at 2; SDG&E Comments on Revised APD at 2.

²⁷ The Decision (at 62) did acknowledge SDG&E's comments that the Community Solar program "would exacerbate existing cross-subsidies."

determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

- (1) The order or decision of the commission was an abuse of discretion.
- (2) The commission has not proceeded in the manner required by law.
- (3) The commission acted without, or in excess of, its powers or jurisdiction.
- (4) The decision of the commission is not supported by the findings.²⁸

The Decision's failure to discuss the cost shift implications of its programs similarly fails reasoned decisionmaking. Even without the statutory directive to consider cost-shift evidence for AB 327 programs discussed above, failure to consider such a substantial impact on non-participating customers is legal error. The Decision's sole justification for the discount – that it will make renewable energy more accessible and more affordable for low-income customers – does not provide a reasoned basis for imposing additional costs on non-participating customers. Nor can the Commission credibly assert that this additional benefit for low-income customers is required by statute, or that the additional benefits cannot be obtained in other ways.²⁹

III. IT IS ERROR TO IGNORE THAT SDG&E CANNOT MEET THE DECISION'S SCHEDULE

SDG&E's comments on the proposed decision, original alternate, and revised alternate, alerted the Commission to a critical timing issue concerning the replacement of SDG&E's

²⁸ The Commission's regulations must be just and reasonable and, in order to meet this requirement, the Commission's orders must be based on findings of fact and conclusions of law consistent with the record adduced in its proceedings. *See City of Los Angeles v. Public Utilities Commission*, 7 Cal. 3d 331, 337 (1972), citing *Greyhound Lines, Inc. v Public Utilities Commission*, 65 Cal. 2d 811, 813 (1967), and *California Motor Transport Company*, 59 Cal. 2d 270, 274-275 (1963).

²⁹ AB 327's directive (§ 2827.1(b)(1)) to develop "specific alternatives designed for growth among residential customers in disadvantaged communities ("DACs")" does not require violating the CARE discount limits, or providing any discount at all. Indeed, while it is laudable that the Commission seeks other ways to assist low-income customers to access renewable energy, the Commission has discharged its obligation "to encourage installation of renewables in DACs" under AB 327 with the SOMAH program (*see*, Decision at 7; D.17-12-022 at 14) and the Decision's DAC-SASH program.

Customer Information System (“CIS”).³⁰ SDG&E pointed out that, if the Commission adopted the proposed decision or the original alternate’s programs, implementing changes to the utilities’ billing and customer information systems will be challenging. Implementation will be further complicated for SDG&E, because during this time, SDG&E expects to be in the midst of its CIS Replacement Program. As discussed in Application (“A.”) 17-04-027, SDG&E plans to institute a one-year “freeze period” to its legacy CIS and subsystems (scheduled to begin in 2020), to reduce the overall risk and customer impacts as it transitions to the new system. The “freeze period” will require that any new structural rate changes or other similar initiatives be deferred for a period of one year to permit transition from the legacy CIS to the new system.

In its comments to the proposed, alternate, and revised alternate decisions, SDG&E took the position that it could possibly implement any of the Decision’s three programs in 2019 if implementing approvals are reasonably prompt and the programs’ scope, once approved, is stable.³¹ In its opening comments, SDG&E’s goal was to alert the Commission to the potential timing conflict; it did not propose any specific relief regarding this important transition risk.

But in its reply comments to the revised alternate decision, because of the parties’ complex and conflicting views asserted in their opening comments, SDG&E stated that it is “now certain that any Community Solar program cannot be approved by the Commission with enough detail to implement before the 2020 freeze period for SDG&E’s CIS transition.”³²

³⁰ SDG&E Comments on PD at 5-6; SDG&E Comments on APD at 8-9; SDG&E Comments on Revised APD at 3-4; *Reply Comments of ... [SDG&E] on Revised Alternate Proposed Decision of Commission Martha Guzman Aceves* (June 18, 2018) (“SDG&E Reply Comments on Revised APD”) at 2-3.

³¹ See n. 26, *supra*. Only SDG&E Comments on Revised APD (June 11, 2018 at 3-4) described the timing issue as implicated by all three programs.

³² SDG&E Reply Comments on Revised APD at 2.

As SDG&E feared, the Decision adopts an implementation schedule for the programs that will intrude into the CIS freeze and will place significant risk on timely replacement of SDG&E's legacy CIS system. The programs adopted by the Decision are highly complex and will require significant IT coding changes and testing SDG&E's legacy billing system to ensure they are accurately implemented. The Decision's Community Solar program is especially complex, as it introduces specific customer eligibility requirements,³³ low-income requirements,³⁴ project size requirements,³⁵ the concept of a sponsor bill credit,³⁶ and permission to operate requirements.³⁷ SDG&E is certain that the required level of coding and testing to accommodate these unique criteria in its billing system will cause the implementation to extend into its CIS freeze period and create significant risk for transition to the new system.

It is self-evident that customer information system technology is critical not only to successfully discharge the public utility obligation to serve, but to successfully implement the plethora of customer programs instituted by the Commission in recent years. Changes to rate structure and introduction of customer options can be expensive and time-consuming to implement successfully. And for SDG&E, the imminent advent of community choice aggregation ("CCA") in its service territory (where the utility remains responsible for billing CCA customers) compounds the complexity of increasing customer programs and mandated rate options.³⁸ Note that Southern California Edison Company ("SCE") also found that

³³ D.18-06-027 at 66-70.

³⁴ *Id.* at 71-72.

³⁵ *Id.* at 72-73.

³⁶ *Id.* at 77-78.

³⁷ *Id.* at 80-81.

³⁸ According to this Commission, up to 85% of the historical retail customer base of the three investor-owned utilities could leave utility bundled service procurement to have their energy provided by

circumstances require replacement of its customer information system. SCE noted that the timing for implementation of its community solar proposal in this proceeding was driven by SCE's similar need to accommodate its customer information system replacement, albeit SCE's replacement schedule differs from that of SDG&E.³⁹

In such circumstances, SDG&E is confident that the Commission will find it reasonable for SDG&E to replace its legacy system in A.17-04-027.⁴⁰ Given the foregoing, the Decision violates reasoned decision making by failing to address SDG&E's concerns over the timing of implementation. On rehearing the Commission should provide SDG&E with an implementation schedule that will accommodate the freeze period necessary to the CIS replacement.

alternative energy providers or other non-IOU sources, principally CCAs, in the immediate future. See Staff White Paper, *Consumer and Retail Choice, the Role of the Utility, and an Evolving Regulatory Framework* (May 2017), p. 3. A single community, the City of San Diego, which is considering CCA, represents 40% of SDG&E's load.

³⁹ SCE has applied for its Customer Service Re-Platform Project ("CSRP") as part of its 2018 general rate case. In this case, SCE observed that:

The CSRP will directly impact the feasibility and timing for implementing new programs and tariffs such as those outlined in the PD and APD because the initial development of the CSRP, its launch, and its stabilization process will require SCE to avoid major new transactions during the period approximately beginning 2019 through end of 2020.

Comments of ...[SCE] on Proposed and Alternate Decisions, (March 12, 2018) at 9, 11.

⁴⁰ This application was submitted for Commission decision via an all-party settlement in January 2018,

IV. CONCLUSION

SDG&E asks the Commission to grant rehearing and (1) strike the Decision's provisions ordering the 20 percent discount off the total customer bill in the DAC-Green Tariff and Community Solar programs, and (2) add findings of fact, conclusions of law and an ordering paragraph permitting SDG&E to defer implementation of the Decision's programs until the freeze period necessary to SDG&E's CIS replacement has ended.

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